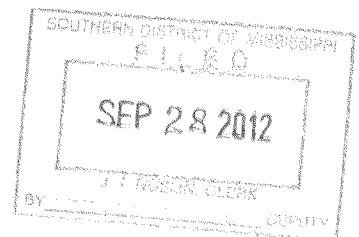


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



EMILY LOWE, Individually, as Administratrix
for the Estate of FLORENCE PATTON, and
DORA JONES on Behalf of the Wrongful Death
Beneficiaries of FLORENCE PATTON

PLAINTIFFS

v.

CIVIL ACTION NO. 3:12cv682 CWR-LRA

MANHATTAN NURSING & REHABILITATION
CENTER, LLC; Corporations A-G; Jane Does A-G;
and John Does A-G

DEFENDANTS

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Manhattan Nursing and Rehabilitation Center, LLC files this Notice of Removal of the civil action styled *Emily Lowe, Individually, as Administratrix for the Estate of Florence Patton, and Dora Jones on Behalf of the Wrongful Death Beneficiaries of Florence Patton v. Manhattan Nursing & Rehabilitation Center, LLC; Corporations A-G; Jane Does A-G; and John Does A-G*; Civil Action No. 251-12-675-CIV, from the Circuit Court of the First Judicial District of Hinds County, Mississippi, to the United States District Court for the Southern District of Mississippi, Jackson Division. In support of this Notice, Manhattan states the following:

1. Plaintiffs Emily Lowe and Dora Jones filed this medical negligence action on August 16, 2012. The lawsuit arises out of the care and treatment provided to Florence Patton while a resident of Manhattan Nursing and Rehabilitation Center, LLC. According to the Complaint, Florence Patton suffered injuries as a result of Manhattan's negligence.
2. The Plaintiffs served Manhattan with a copy of a Summons on August 30, 2012.

The Summons did not include a copy of the Plaintiffs' Complaint. *See* Exhibit A.¹ However, Manhattan obtained a copy of the Complaint from the circuit clerk's office.² In the Complaint, the Plaintiffs assert claims of negligence, medical malpractice, deviations from the standard of care, negligent supervision, negligent retention, wrongful death, and gross negligence against the Defendants. The Plaintiffs also assert claims based on respondeat superior and res ipsa loquitur, and they seek to recover punitive damages from Manhattan. *See* Exhibit "B".

3. This removal is timely because Manhattan filed this Notice of Removal within thirty days of August 30, 2012, when the Plaintiffs served Manhattan with their Summons. *See* 28 U.S.C. § 1446(b).

4. The Court has diversity jurisdiction over this matter under 28 U.S.C. § 1332 because (1) the amount in controversy exceeds \$75,000.00, exclusive of costs and interest, and (2) there is diversity of citizenship between the Plaintiffs and Manhattan.

5. It is apparent that the amount in controversy requirement is met because the Notice of Claim served on Manhattan pursuant to Mississippi Code Annotated § 15-1-36(15) and attached as Exhibit B to the Complaint states that the Plaintiffs seek to recover \$500,000.00 in damages from Manhattan.

6. Diversity of citizenship exists because the Plaintiffs allege to be citizens of Mississippi, and Manhattan is not a citizen of Mississippi. Compl. at ¶ 1. As set forth in detail below, Manhattan Nursing and Rehabilitation Center, LLC is a Mississippi limited liability company whose members are all citizens of the State of New York. Therefore, Manhattan is not a citizen of Mississippi. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008)

¹ Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons served on Manhattan is included in Exhibit "A".

² The Complaint obtained from the clerk's office is attached as Exhibit B. Manhattan reserves its right to move for dismissal of this case for insufficient service of process pursuant to F.R.C.P. 12(b).

(holding that the citizenship of an LLC is that of all its members).

7. Manhattan Nursing and Rehabilitation Center, LLC's members are D&N, LLC and DTD HC, LLC. D&N, LLC and DTD HC, LLC are New York limited liability companies. D&N, LLC's members are Norbert A. Bennett, the Norbert A. Bennett Children's Trust, and the Norbert A. Bennett Grand-Children's Trust. Mr. Bennett is a citizen of New York. The trustee of the Norbert A. Bennett Children's Trust is Ronald Bennett, a citizen of New York, and the trustee of the Norbert A. Bennett Grand-Children's Trust is also Ronald Bennett. *See Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 n. 6 (5th Cir. 2009) (citing *Navarro Savs. Ass'n v. Lee*, 446 U.S. 458, 464 (1980) (holding that the citizenship of a trust is that of its trustee)).

8. DTD HC, LLC's members are Donald T. Denz and the Donald T. Denz Irrevocable Trust. Mr. Denz is a resident and citizen of the State of New York. The trustee of the Donald T. Denz Irrevocable Trust is Martin J. Clifford, a citizen of New York.

9. The Plaintiffs also have named Corporations A-G; Jane Does A-G; and John Does A-G. For removal purposes, however, the citizenship of a defendant sued under a fictitious name is not considered. *Doleac ex rel. Doleac v. Michalson*, 264 F.3d 470, 475 (5th Cir. 2001) (quoting 28 U.S.C. § 1441(a) which states, “[f]or purposes of removal, . . . the citizenship of defendants sued under fictitious names shall be disregarded.”).

10. For these reasons, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, and removal is proper under §§ 1441 and 1446.

11. Venue is proper in the United States District Court for the Southern District of Mississippi, Jackson Division, because that is the district in which the state court action was filed. *See* 28 U.S.C. §§ 1446(a), 104(a)(3).

12. In accordance with 28 U.S.C. § 1446(d), Hinds County Circuit Court and Plaintiffs'

counsel have been given written notice of the filing of this Notice of Removal. *See* Exhibit "C."

WHEREFORE, Manhattan Nursing and Rehabilitation Center, LLC requests that the above-captioned action now pending in Hinds County Circuit Court be removed to the United States District Court for the Southern District of Mississippi, Jackson Division, and that the District Court assume jurisdiction over this lawsuit.

This 28th day of September, 2012.

Respectfully submitted,

MANHATTAN NURSING AND
REHABILITATION, CENTER, LLC

By Its Attorneys,

BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ, PC

By: 

BRAD C. MOODY

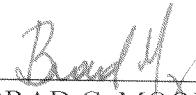
W. Davis Frye (MB# 10671)
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BAKER, DONELSON, BEARMAN
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4268 I-55 North
Meadowbrook Office Park
Jackson, MS 39211
Phone: (601) 351-2400
Fax: (601) 351-2424

CERTIFICATE OF SERVICE

I hereby certify that I have mailed the foregoing *Notice of Removal* via U.S. mail, postage prepaid, to the following:

J. Howard Thigpen
Morgan & Morgan
188 East Capitol Street
One Jackson Place, Suite 777
Jackson, MS 39210

This 28th day of September, 2012.



BRAD C. MOODY